

In the United States Bankruptcy Court
for the

Southern District of Georgia
Waycross Division

FILED

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Date 4-29-93

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia

In the matter of:

JERRY CARLTON DORMINEY

Debtor

Chapter 12 Case

Number 92-50674

ORDER CONCERNING VALUATION

This matter is before the court upon the objection to valuations filed by the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture. The objection was filed pursuant to 11 U.S.C. Section 506(a) of the Bankruptcy Code and arises under Bankruptcy Rule 3012. A hearing was held in Waycross, Georgia, on March 1, 1993, wherein the court heard testimony and accepted written appraisals from both sides to the dispute.

At the hearing, the government and Debtor agreed that there was no significant disagreement as to the value of the real property. The Debtor feels that the real property is worth \$57,000.00 and the United States of America feels that the real property is worth \$59,000.00. Accordingly, the court finds and so holds that the value of the real property is \$58,000.00.

Unfortunately, determining valuations on the chattel property could not be determined so easily. While both sides presented testimony and appraisal reports, they were unable to agree on any significant compromise as to valuation on the majority of the thirty-one items of farm equipment involved in this case. The government feels that the property has an appraised value of \$102,500.00. The Debtor claims the amount is only \$60,950.00. Therefore, the court must make its own determination based on the evidence presented.

Evidence presented by the Debtor consisted of the testimony of Mr. B. G. Buchan, an equipment dealer selling new and used farm equipment and operating in Douglas, Georgia, as United Tractor, Inc. Mr. Buchan has been selling farm equipment since 1966 and prepared his appraisal in January of 1993.

The Farmers Home Administration appraisal was prepared by W. Roger Parten, a County Supervisor for Bacon, Telfair, Wheeler, and Jeff Davis Counties. Even though the Debtor resides in Coffee County, Mr. Parten testified that he handles Mr. Dorminey's FmHA case file inasmuch as the majority of his farming interests occur in Jeff Davis County.

Although thirty-one items of farm equipment are in issue, the parties

at the hearing only submitted detailed testimony concerning those items of farm equipment which seem to have the greatest value and perhaps not coincidentally the largest discrepancy between appraisal amounts.

While finding both appraisers credible, the court believes the testimony of Mr. Parten to be more reliable inasmuch as his experience is broader than that of Mr. Buchan. Mr. Buchan sells equipment and is familiar with prices brought either through sales in his enterprise or through the values he assigns in purchasing such equipment. Mr. Parten attends sales throughout a four-county area and stays current with prices as part of his regular duties. His appraisals are prepared for and relied upon by Farmers Home Administration both for loan decisions as well as foreclosures.

The Debtor testified concerning the values of his farm equipment and under both direct and cross examination identified certain defects in several items of farm equipment held by him. He stated under cross-examination that he intends to use most of his equipment in implementing his Chapter 12 plan and, in fact, indicated that some of the defects in the equipment could be repaired for modest to moderate sums of money when compared with the total value of the farm equipment.

CONCLUSIONS OF LAW

In order to resolve this case, the court must interpret Section 506(a) of the Bankruptcy Code, keeping in mind that Mr. Dorminey intends to keep his property rather than sell it. Section 506(a) provides:

An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

§506(a) (emphasis added).

In determining valuations under Section 506(a) bankruptcy courts generally follow one of two methods of analysis. In re Usry, 106 B.R. 759, 760 (Bankr. M.D.Ga. 1989). Controversy arises out of the two sentences outlined in Section 506(a) cited above. Courts relying more heavily on the first sentence of Section 506(a) find

that, because the claim is secured to the extent of the value of the "creditor's interest," it is the creditor's interest that is being valued and not the collateral itself. Under that analysis, it would not make any difference whether the debtor retained his property. The second sentence, however, indicates that the proposed disposition or use of the collateral is of paramount importance in determining valuation. See In re Claeys, 81 B.R. 985, 990-91 (Bankr. D.N.D. 1987); In re Balbus, 933 F.2d 246, 248 (4th Cir. 1991).

The courts are also split on the issue of whether the costs of sale should be deducted from fair market value when the debtor intends to keep his property. Those feeling the costs should be deducted include In re Smith, 92 B.R. 287, 291 (Bankr. S.D. Ohio 1988); In re Claeys, at 992. Other courts have found that such costs should not be deducted. In re Courtright, 57 B.R. 495, 497 (Bankr. D.Or. 1986); In re Bellman Farms, Inc., 86 B.R. 1016, 1019 (Bankr. D.S.D. 1988).

The legislative history of Section 506(a) indicates that valuation should be done on a case-by-case basis and that no fixed approach is correct.

Value does not necessarily contemplate forced sale or liquidation value of the collateral; nor does it always imply a full going concern value. Courts will have to

determine value on a case-by-case basis, taking into account the facts of each case and the competing interests in the case.

H.R.Rep.No. 595, 95th Cong. 1st Sess. 356 (1977), *reprinted in* 1978 U.S.Code Cong. & Admin. News, 5787, 6312. Cited in In re Balbus, 933 F.2d 246 (4th Cir. 1991).

I find that because the Debtor intends to retain his property, hypothetical costs of sales should not be deducted. See In re 222 Liberty Associates, 105 B.R. 798, 803 (Bankr. E.D.Pa. 1989). If the parties are not actually contemplating the sale of property, there is no need to deduct costs of sale from the valuation analysis. In re Usry, 106 B.R. at 761-762. Thus, because Debtor intends to retain his property and use it to create the very income needed to fund his plan, his equipment obviously has more value than if it were to be liquidated at a forced sale such as might arise under a Chapter 7 proceeding. The fact that an asset might be used in a continuing enterprise was recognized in the case of Matter of Reynolds, 17 B.R. 489 (Bankr. N.D.Ga. 1981), where Judge Norton stated in a Chapter 13 proceeding that the debtors'

continued use of the vehicle . . . during the period of a proposed plan demands a rehabilitation value consistent with the 'going concern' of the Chapter 13 debtors. The retention of the vehicle enables the

debtors to avoid the necessity of replacement transportation. The debtors have made a conscious decision to keep and pay for the vehicle rather than surrendering it In this instance the debtors' proposed retention and use of the vehicle pursuant to a Chapter 13 plan connotes a going concern value. Thus, the retail replacement cost standard is the appropriate measure of value under 506(a).

Id. at 493.

The testimony before the court in this case is that the Debtor intends to keep his equipment and use it for his farm enterprise. He has stated that such equipment needs modest to moderate repairs and the court finds that such repairs can enhance the value of farm equipment in excess of the value of the actual repair effected. In an effort to resolve the conflicting appraisals in this case, I rely more heavily on the testimony of Roger Parten, County Supervisor for the Farmers Home Administration, due to his experience and broader knowledge of general market conditions in the relevant market area. I will deduct repair costs estimated by the Debtor from Mr. Parten's appraisals to arrive at a net valuation with regard to certain major items of equipment as follows: The 1986 Lilliston Hi-Cap 6,000 peanut combine was valued by Farmers Home Administration at \$3,500.00. The Debtor feels its value is closer to \$2,800.00. The Debtor testified it would cost \$400.00 to fix;

therefore, the court finds its value to be \$3,100.00. The 1978 Lilliston Hi-Cap 6,000 peanut combine valued at \$2,500.00 by Farmers Home Administration and \$1,900.00 by the Debtor contains bent fan blades. While the Debtor originally testified it could not be used, on cross-examination he admitted he plans to use the item. No costs of repair were provided and so the court will find the value to be exactly between the two appraisals given, or \$2,200.00. The 1989 John Deere 2955 tractor valued by Farmers Home Administration at \$18,000.00 was felt to be worth only \$12,000.00 according to the Debtor's appraisal. The tractor contains an engine knock which is undiagnosed at this time. The Debtor feels that it could be fixed depending on the source of the knock for between \$300.00 and \$3,000.00. Given the speculative nature of this testimony I will reduce the value by \$1,500.00 to \$16,500.00. The 1979 International Harvester 1486 tractor valued at \$8,000.00 by the Farmers Home Administration and \$3,600.00 by the Debtor's appraiser was estimated by the Debtor to need no more than \$200.00 in repairs. Accordingly, the court finds that its value is \$7,800.00. The 1990 John Deere 7300 planter was valued by Farmers Home Administration at \$8,000.00. The Debtor's appraiser found that the equipment was worth only \$4,000.00 and stated the peanut allotments were considerably reduced in Coffee County. Therefore, the value of peanut equipment would be less. Mr. Parten, for Farmers Home Administration, however, testified while peanut allotments were, in fact, down in Coffee County, they were up in other nearby counties and that equipment related

to the peanut industry could certainly be sold easily in those counties. Accordingly, the court finds the value of the planter to be \$8,000.00. The 1982 John Deere 215 Flex Grain Head valued at \$2,000.00 was found to be worth only \$1,200.00 by the Debtor. A center bar was reported broken and no repair costs were estimated. Therefore, after splitting the difference, the court finds its value to be \$1,600.00.

The most valuable piece of equipment was a 1982 John Deere Hydrostatic Combine valued by Farmers Home Administration at \$30,000.00. The Debtor's appraiser found its value to be only \$14,500.00. Testimony indicated that the combine had received a new engine in 1992 and the Debtor testified that it only needed a new tire to make it "okay." A new tire was estimated by the Debtor as being \$1,400.00. Mr. Parten testified that the book value of the combine was \$35,000.00 and that he, after giving deference to the wear and tear suffered by the equipment, reduced that to \$30,000.00. The court finds that value credible but will in addition credit the Debtor with the price of the tire resulting in a final valuation of \$28,600.00. Finally, the 1990 John Deere 900 HC Tractor was valued by Farmers Home Administration at \$8,000.00 and found to be worth only \$4,700.00 by the Debtor's appraiser. The Debtor testified that the tractor had some corrosion or rust due to fertilizer spillage on its hood but that otherwise it was "okay." Mr. Parten testified that the tractor was only one year old and by itself cost \$7,700.00 when new. He

assigned a higher value to it, however, because it contained extra equipment consisting of cultivators and distributors. There was no testimony to rebut this fact and, therefore, the court finds that its value is, in fact, \$8,000.00. In summary, the court finds the values stated above as follows:

<u>Equipment</u>	<u>Court's Valuation</u>
1986 Lilliston Hi-Cap 6000 Combine	\$3,100.00
1978 Lilliston Hi-Cap 6100 Combine	\$2,200.00
1989 John Deere 2955 Tractor	\$16,500.00
1979 Int'l Harvester 1486 Tractor	\$7,800.00
1990 John Deere 7300 Planter	\$8,000.00
1982 John Deere 215 Flex Grain Head	\$1,600.00
1982 John Deere Hydrostatic Combine	\$28,600.00
1990 John Deere 900 H.C. Tractor	\$8,000.00
TOTAL	\$75,800.00

With regard to the remaining equipment, while the court finds that Mr. Parten's testimony is reliable, it also realizes there is an inherent amount of error in any attempt to appraise property. With that in mind and because of the relatively smaller amounts involved with the remaining farm equipment, the court will simply split the difference between each party's appraisal, to wit:

<u>Equipment</u>	<u>Debtor's Value</u>	<u>FmHA Value</u>	<u>Court's Value</u>
1975 Ford Dumptruck	\$900.00	\$1,000.00	\$950.00
Cat Dozier	\$2,000.00	\$3,000.00	\$2,500.00
1972 John Deere Tractor	\$2,150.00	\$2,000.00	\$2,075.00
Equipment Trailer	\$675.00	\$800.00	\$737.00
Watermelon Converter	\$300.00	\$1,000.00	\$650.00
1990 J.D. Switch Plow	\$2,100.00	\$3,000.00	\$2,550.00
Corn Wagon	\$250.00	\$400.00	\$325.00
Tine Cultivator	\$400.00	\$400.00	\$400.00
KMC Ripper bedder	\$350.00	\$500.00	\$425.00
KMC Ripper spider		\$400.00	\$400.00
Vader Cultivator	\$150.00	\$100.00	\$125.00
1976 J.D. Grain Head	\$650.00	\$1,000.00	\$825.00
1985 J.D. Corn Head	\$1,500.00	\$2,000.00	\$1,750.00
Agriteck Sprayer	\$1,450.00	\$1,500.00	\$1,475.00
Athens Chisel Plow	\$400.00	\$520.00	\$460.00
Paulk Peanut Plow	\$400.00	\$400.00	\$400.00
Paulk Peanut Plow	0.00	0.00	0.00
Flip Plow	0.00	0.00	0.00
Front Mount Sprayer	0.00	0.00	0.00
Gravity Flow Trailer	0.00	0.00	0.00
Switch Plow John Deere	\$1,500.00	\$2,000.00	\$1,750.00
Auger Hutchinson	\$50.00	\$150.00	\$100.00
Rotary Mower Bush Hog	\$250.00	\$1,200.00	\$725.00
1990 King Box Blade	\$175.00	\$300.00	\$238.00
TOTAL			\$18,885.00

Therefore, the court finds that the total value of all the farm equipment described above to be \$94,685.00.

ORDER

IT IS THE ORDER OF THIS COURT that pursuant to 11 U.S.C. Section 506(a), the court has determined the value of the farm equipment set out above and such value for the reasons stated is \$94,685.00.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 21st day of April, 1993.